

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DONALD C. HUTCHINS)	
)	
Plaintiff)	
)	
v.)	Civil Action: 04-30126-MAP
)	
CARDIAC SCIENCE, INC.)	
)	
Defendants)	
_____)	

**CPR L.P.'S MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR JOINDER**

Non-party CPR L.P. respectfully requests that Plaintiff Donald C. Hutchins' ("Hutchins") Motion for Joinder of CPR L.P. (the "Motion") be denied. Hutchins' belated Motion should be denied because he failed to establish that CPR L.P.'s presence in this action is necessary for a full resolution of the claims existing among the parties.

Hutchins filed this case in June of 2004 against Defendant Cardiac Science. Cardiac Science has since received summary judgment on all of the claims asserted against it by Hutchins. In the Fall of 2004, Hutchins sought and was granted leave to join Complient Corporation as a Defendant to this case. Hutchins asserted claims for fraud, misrepresentation and breach of contract against Complient. Complient moved for summary judgment in July of 2005. On January 4, 2006, the Court conducted a hearing on Complient's Motion for Summary Judgment as well as all motions pending as of that date. A decision has not yet been rendered by the Court on Complient's dispositive Motion.

Hutchins' claims against both Cardiac Science and Compliant were allegedly based on an Asset Purchase Agreement entered into by and among Cardiac Science, Compliant Corporation and CPR L.P. Hutchins' Amended Complaint is replete with allegations regarding the terms of the Asset Purchase Agreement and, as such, he was admittedly aware of its terms as of June, 2004. Now, only after the Court has granted summary judgment to Cardiac Science and conducted a hearing on Compliant's Motion for Summary Judgment, does Hutchins seek to add CPR L.P. as a Defendant to this action. This belated request is an obvious effort to resuscitate his meritless claims; however, Hutchins fails to meet the requisite pleading standard for joinder of CPR L.P. at this late stage of the case.

Specifically, Hutchins' Motion wholly fails to establish the necessity of joining CPR L.P. to this case. Hutchins states merely that CPR L.P. was a party to the Asset Purchase Agreement; he gives no explanation whatsoever as to how that undisputed fact could possibly give rise to liability by CPR L.P. or why "complete relief" cannot be accorded the parties in CPR L.P.'s absence. Instead, he simply recites the text of Rule 19(a)(1). This is an insufficient basis upon which to join CPR L.P. and require a foreign entity to appear and defend itself in this forum. It is evident that Hutchins seeks to join CPR L.P. solely in the hopes of reviving his claims.

Accordingly, CPR L.P. respectfully requests that Hutchins' belated Motion for Joinder be denied.

Respectfully submitted,

/s/ John J. Egan

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CERTIFICATE OF SERVICE

A copy of the foregoing CPR L.P.'s Memorandum in Opposition to Plaintiff's Motion for Joinder is being served by operation of the Court's electronic filing system and First Class United States Mail this 17th day of February, 2006, upon:

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/s/ John J. Egan
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